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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,445	04/27/2006	Jie Chen	425888003US	8028
25096	7590	05/14/2008		
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			EXAMINER BROOKS, KRISTIE LATRICE	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			05/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,445	<b>Applicant(s)</b> CHEN ET AL.	
	<b>Examiner</b> KRISTIE L. BROOKS	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/6/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### **Status of Application**

1. Claims 1-13 are pending.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu et al. (WO 02/34724) (US Patent 6,800,590 used as English translation) in view of Balstrusch et al. (US 6,683,027).

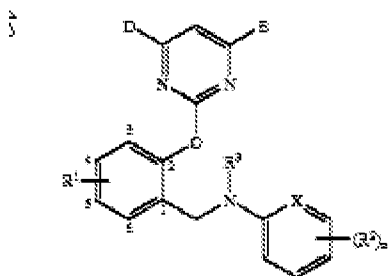
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Applicant claims a herbicidal composition comprising pyrimidinyl benzylamine herbicide and at least one herbicide selected from a group consisting of acetyl-CoA carboxylase (ACCase) inhibitors, chloroamide herbicides, ethametsulfuron, and benazolin. Applicant also claims a process of weed control comprising applying the herbicidal composition.

### Determination of the scope and content of the prior art

#### (MPEP 2141.01)

Lu et al. discloses new 2-pyrimidinyl-oxy-N-aryl-benzylamine derivatives of formula I



that are useful as herbicides (see the abstract, Table I and column 1 lines 9-11).

The compounds have excellent broad spectrum weed control and are effective active substances for formulating herbicides (see column 13 lines 47-50). The compounds can be formulated with additives such as carriers, surfactants so as to formulate emulsions, powder, granule or capsule preparations (see column 13 lines 5-12).

### Ascertainment of the difference between the prior art and the claims

**(MPEP 2141.02)**

Lu et al. do not teach a herbicidal compositions comprising benzylamine derivatives of formula I and additional other herbicides such as acetyl-CoA carboxylase (ACCase) inhibitors, chloroamide herbicides, ethametsulfuron, and benazolin. However, Balstruschat et al. teach herbicides such as acetyl-CoA carboxylase (ACCase) inhibitors, chloroamide herbicides, ethametsulfuron, and benazolin as effective against broad leaf weeds and annual grasses (see the abstract).

Balstruschat et al. teach herbicidal compositions and method for controlling unwanted vegetation comprising a composition comprising an active agent, carrier and or surfactant (see the abstract). The composition contains herbicides effective against broadleaf weeds and annual grasses, such as ethametsulfuron, benazolin, fenoxaprop, quizalofop, sethoxydim, alachlor, and naproamide (see claim 5). The combination of active ingredients in the herbicidal composition provides synergistic activity against a broad spectrum of weed species (see the abstract and column 2 lines 32-34). The composition contains from 0.5 to 95% by weight of active ingredients (see column 20 lines 20-22).

**Finding of prima facie obviousness****Rational and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make a composition comprising benzylamine derivatives of formula I and additional other

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herbicides such as acetyl-CoA carboxylase (ACCase) inhibitors, chloroamide herbicides, ethametsulfuron, and benazolin because benzylamine derivatives of formula I and herbicides such as acetyl-CoA carboxylase (ACCase) inhibitors, chloroamide herbicides, ethametsulfuron, or benazolin are all taught to be effective against broadleaf weeds and annual grasses as suggested by Lu et al. and Balstruschat et al.

Although Lu et al do not teach the benzylamine derivatives of formula I in a composition with other herbicidal actives, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the herbicides because it is prima facie obviousness to combine compounds taught to be useful for the same purpose (*In re Kerkhoven*, 626 F.2d 846, 850,205 USPQ 1069, 1072 (CCPA 1980)). And in this case, all the herbicides are effective herbicides against broadleaf weeds and annual grasses. Thus, one of ordinary skill would combine the components for the benefit of broadening the activity against weeds and grasses. Furthermore, although Lu et al. and Balstruschat et al. do not teach the instant ratio of compounds used, it is merely routine process optimization, to determine the amounts of active ingredients necessary to achieve successful results. Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

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***Conclusion***

5. No claims are allowed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616